

**AGREEMENT TO SUPPORT THE TRIANGLE REGIONAL MODEL (TRM)  
DEVELOPMENT BETWEEN NORTH CAROLINA STATE UNIVERSITY AND THE  
CITY OF DURHAM**

This Agreement is made, dated and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Durham (“City”), on behalf of the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO), hereinafter called “Sponsor” and the North Carolina State University (NCSU) for its Institute of Transportation Research and Education (ITRE), hereinafter called “University”, hereinafter jointly called “Parties.”

***RECITALS***

WHEREAS, the City has been designated by the Governor of the State of North Carolina as the Lead Planning Agency (LPA) for the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization to be responsible for carrying out the provisions of Section 134, Title 23, United States Code, and as the recipient of Section 104(f) and Section 133(b)(3)(7) has agreed to used portions of these funds to support the development and continuous update and maintenance of a regional transportation travel demand model;

WHEREAS, the City and other participating agencies (Triangle Transit, NCDOT and the City of Raleigh), (hereinafter called “the Stakeholders”), have jointly undertaken development of a regional travel demand model, known as the Triangle Regional Model, and have recognized the desirability, cost effectiveness and benefits of the response time derived from centralizing development resources in order to further update, improve, and maintain this model most efficiently;

WHEREAS, the Sponsor and the stakeholders have agreed to partner with the Institute for Transportation Research and Education (hereinafter called “ITRE”), to perform transportation planning services related to the timely development, update, improvement and maintenance of a regional travel demand model for the Triangle Region, known as the Triangle Regional Model;

WHEREAS, the Sponsor relies on the model to support many critical transportation planning functions that include but not limited to legislative mandated requirements, project development, corridor planning studies, sub-area studies and traffic impact studies;

WHEREAS, it is the stated goal and desire of the Sponsor to have a calibrated and validated model ready before the commencement of the development of the long range transportation plans;

WHEREAS, the Sponsor and other Stakeholders will jointly participate in setting the goals, work program, priority and evaluate the performance of ITRE in providing these planning services;

WHEREAS, the service contemplated by this Agreement is of mutual interest and benefit, to the City and Sponsor, by accomplishing its objectives, and to University by furthering its instruction,

research and public service missions in a manner consistent with its status as a public Land Grant University;

WHEREAS, ITRE is part of the University, an educational institution with the requisite facilities and expertise to provide, the contemplated services on a limited noncommercial basis;

WHEREAS, City intends to fund continuing work performed by ITRE on an annual basis so long as model objectives and performance are met and products are delivered in a timely manner. Request for fund to be made through the City Budget process;

WHEREAS, City intends to pay for the proposed service with flow- through Federal funds awarded to it by North Carolina Department of Transportation (NCDOT under the Catalog of Federal Domestic Assistance (CFDA) Number 20.205-5; and through “local match” funds provided by the City;

WHEREAS the Federal regulations applicable to these funds are 49 CFR 18 for Sponsor and 49 CFR 19 for University; and

WHEREAS Sponsor and stakeholders have contracted to use ITRE, and to contract with the University, to perform planning services related to the update, improvement, enhancement, and maintenance of the Triangle Regional Model;

NOW, THEREFORE, the parties agree as follows:

#### Section 1.

Sec. 1. Background and Purpose. The purpose of this Agreement is for the development, update, enhancement, improvement and maintenance of the Triangle Regional Model (TRM) that it meets the DCHC MPO performance standards and is sensitive to a broad range of policy issues (including federal requirements and guidelines), and utilize connectivity between travel demand models and land-use models.

Sec. 2. Services and Scope to be Performed; Time of Performance. In this Agreement, “Work” means the services that the University shall perform pursuant to this Agreement and all of the University’s duties to the City that arise out of this Agreement. The University shall provide services as specifically described in Exhibit A titled “Project Scope of Work and Budget,” which

includes a list and detailed description of multiple Tasks, objectives, level of effort (including an estimate of hours per task), work products/deliverables, schedule by task and subtask and is incorporated into this Agreement. The persons, entities, expenses, and general percentage of effort anticipated to be required to successfully perform the Work are as described in Exhibit A.1, "Percentage of Effort Estimate by Task," which is also attached hereto and incorporated herein. Exhibit A.1 does not limit the effort necessary to perform the Work under this Agreement; however, it does limit the total cost and compensation for each task identified. The total project cost, for all the Work, shall not exceed \$126,589. Although some Work tasks are multi-year, Work identified in the scope and this Agreement shall be for a one year period from July 1, 2013 to June 30, 2014, on approximately the time schedule shown in Exhibit A.2, "Schedule of Effort by Task, Subtask and Timeline." The Transportation Planning Manager may extend this time period by up to three months, in writing, at his discretion. Any Agreement extension for FY 2013-2014 activities identified in the scope and described in Exhibit A.1 and beyond three months must be approved in writing by the City Manager.

University, as a recipient of flow-through Federal funding represents and certifies that it currently is and will remain in compliance with the requirements listed in Exhibit B

Annual Work Program and Five-Year Work Program. The specific goals of these planning services, and performance criteria by which these planning services are to be assessed, shall be mutually agreed upon by the Sponsor, stakeholders and ITRE on an annual basis. ITRE shall develop an annual work program to include detailed task descriptions, estimates of person hours by tasks, deliverables, budget, schedule and timeline. As required by the FHWA and NCDOT, ITRE shall develop a Five-Year Work Program to be updated annually. The Sponsor will review the annual and 5-year work programs and approve such program before Sponsor is obligated to pay for services for the coming year under this Agreement. Appendix A is the program for the year beginning on July 1, 2013. Approval of the program by Sponsor is delegated to Durham's Transportation Planning Manager. Such approval shall be in writing. Each program, after approved, shall be considered a part of this Agreement.

ITRE's services shall include the following:

i. Model Support / Enhancement/Maintenance

ITRE shall provide production capabilities to maintain, update and execute the Triangle Regional Model and to maintain and update all associated data. Work will include but not be limited to: model calibration and validation, developing improved algorithms or interfaces, writing utilities and scripts to render the model more "user friendly", and extending the scope of the model consistent with the needs and expectations of the stakeholders. Routine support of the model will include but not be limited to: documentation, GIS/database management and coordination of data collection, possibly to include establishing mechanisms of automated data collection from planning agencies and other sources. Continuous improvements and enhancements will include non-motorized trip, parking supply and cost, park & ride search, climate change impact, pricing, freight, airport, etc.

ii. Model Training

ITRE shall provide training for users of the model, including organizations, agencies, consultants and researchers designated by the Sponsor and stakeholders. Training will consist of technical workshops on how to use the model, how it is calibrated, and how to interpret the output. Training will also include presentations oriented toward MPO member agencies and technical staff members that detail how the model can be used as a decision

tool, what assumptions have been incorporated in the model, and how to use the model output to assess project and policy alternatives.

### iii. Research

ITRE shall provide research in transportation and land use modeling with the goals of improving the model's accuracy, conforming to the best state of practice in the fields of land use modeling, transportation modeling, air quality conformity and adapting the model to the evolving policies and practical needs of the stakeholders. Topics of research may include the interaction of land use plans and transportation, transportation measures and conformity analyses, travel demand management, climate change, transportation equity, environmental justice, pricing and other policy-related issues.

### iv. Stakeholder Support

ITRE shall provide access to the model and data to the Sponsor through its designated liaison(s). Such access will include electronic copies of the model and data, as well as access by designated staff of the Sponsor to computers and other facilities at ITRE as may be necessary to customize the model to such specific needs of the Sponsor as may arise.

Sec. 3. Complete Work without Extra Cost. University shall perform all Work and shall obtain and provide, without additional cost to the City beyond the total costs identified in Exhibit A.1, all labor, materials, equipment, transportation, facilities, services, permits, expenses, and licenses necessary to perform the Work.

Sec. 4. Payments & Compensation. The Parties agree that this will be a cost reimbursement Agreement based upon quarterly invoicing for periods ending in September, December, March and June. The City's payment for the Work or for any modifications of such Work shall not exceed \$126,589 unless this Agreement is amended through action of the City Council. The City shall pay the University for actual cost incurred and for the Work completed as follows: Payment shall be for the percentage completion of the tasks performed and for a maximum amount for certain reimbursable expenses, all as shown in Exhibit A.1. Payment for tasks performed and associated expenses shall not exceed the amounts for completion of each individual task as shown on Exhibit A.1 unless the tasks are modified as described hereafter. Modifications that alter the tasks by redistributing the amount of work, and/or compensation for such work, within or amongst the tasks or subtasks may be made in writing by the Project Manager or Transportation Planning Manager and shall be mutually agreed to by University. The City shall not be obligated to pay the University any payments, fees, expenses, or compensation other than those authorized by this section and shown in Exhibit A.1. Actual effort expended on the Work will be reported at the University in accordance with the University's approved effort reporting system.

Sec. 5. University's Billings to the City. The University shall send invoices to the City on quarterly basis or when each Task is completed, pursuant to this Agreement. Each invoice shall be followed, to the reasonable satisfaction of the City, such information as described herein. At a minimum each invoice shall be followed by a progress report documenting the nature of the work performed, the particular task to which the labor or expense is attributed, breakdown of labor/effort expended. Each invoice shall include the total amount of compensation claimed for that task since the inception of the Agreement and a summary table showing amount invoiced. University shall submit an invoice marked "Final Invoice" within 30 days following the end of each fiscal year (June 30). Within thirty days after the City receives an invoice, the City shall

send the University a check in payment for all undisputed amounts contained in the invoice that have been billed in accordance with this Agreement. Payment shall not be deemed acceptance of the work for purposes of the City's determination as to whether the Work is of acceptable quality. The Parties agree that the Work performed hereunder will represent the University's good faith efforts and will be of the highest professional standards and quality. Notwithstanding any other provision of this Agreement, the City may withhold an amount consisting of 10 percent of the not-to-exceed figure in the Agreement until all Work has been performed and completed under the Agreement to the satisfaction of the City. No withholding shall occur for deliverables delayed due to City reviews, City lack of response to information requests deemed critical to complete a task, or due to third party reasons outside of the control of the University.

The City shall reimburse University by mailing checks made out to NC State University to NCSU Office of Contracts and Grants, CB 7214, Raleigh, NC 27695-7214

Sec. 6. Audits and Record Retention. The University shall make all persons and records associated with the Work available to the City, the N.C. State Auditor, the U.S. Comptroller General or any of their authorized representatives for review and audit for a period of three years past the date of the final invoice.

Sec. 7. Deliverables, Work Products, Input and Output data, Software and Programs. The University shall submit to the City the deliverables, work products, technical memoranda and/or reports described in Exhibit A, as well as associated work programs, including all applicable data sets, software, routines, software source code and scripts, and other documentation necessary to configure, calibrate, validate, test run and maintain the model. The SPARCS office shown below in Section 13 will render assistance on behalf of the University if technical reports or deliverables are delinquent.

Sec. 8. Performance of Work by City. If the University fails to perform the Work to a quality expected by the City, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies.

Before doing so, the City shall first give the University a 30-day written notice of its intention by certified mail, return receipt requested. The City may declare the University in default if University fails to cure such default within said 30 day receipt of written notification. In such event, the University shall only be compensated for those tasks specified in Exhibit A or any individual task assignment herein, which has been completed as of the date of default. In the event partial payment has been made for such services not completed, the University shall return such sums to the City within thirty (30) days after receipt of written notice, by certified mail, return receipt requested that said sums are due.

Sec. 9. Insurance and Public Liability. To the extent permitted and in the manner prescribed under applicable law including but not limited to the North Carolina Tort Claims Act, GS § 143-291, et seq. for the University, the City and University agree to each be responsible for their own negligence and the negligence of their employees and agents. Neither the City nor University waive any rights or defenses under applicable law, nor do they waive any defense of sovereign immunity except to the extent provided in applicable law. Employees of the City and employees and/or students of University shall not be considered employees or agents of the other party. During the term of this Agreement, University shall maintain, at its expense, insurance as provided by the State of North Carolina, a summary of which is attached hereto as Exhibit C.

During the term of this Agreement, University shall comply with the Workers Compensation laws of the state where the work is performed.

Sec. 10. Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A, Project Scope of Work and Budget;

Exhibit A.1, Percentage of Effort Estimate by Task;

Exhibit A.2, Schedule Effort by Task, Subtask and Timeline;

Exhibit B, Federal Regulatory and Programmatic Requirements for Federal Flow-through Funding, and

Exhibit C, Summary of University Insurance Policies

In case of conflict between an exhibit and the text of this Agreement excluding the exhibit, the text of this Agreement shall control.

Sec. 11. Termination for Convenience ("TFC"). The City may terminate this Agreement without cause, at any time upon 30 days written notice to University. Upon receipt of notification, University must proceed in an orderly fashion to limit or terminate any outstanding commitments to which it is legally obligated, and/or to conclude the Work due at the time of termination. The City shall reimburse University for all costs and obligations incurred in performance of the Work prior to termination. University may terminate performance if circumstances beyond its control preclude the continuation of the Work. If University terminates, University must reimburse the City all unexpended funds, except for those funds needed to pay for legally binding obligations and costs incurred.

(a) *Procedure*. Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this Agreement for convenience by giving the University written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this Agreement titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the University shall give the City all Work, including partially completed Work. In case of TFC, the University shall follow the City's instructions as to which sub-agreements to terminate. (c) *Payment*. Within 20 days after TFC, the City shall pay the University a one hundred dollar TFC fee and reimburse the University for all Work performed except to the extent previously paid for. The City shall pay the part of the total cost for each Task that reflects the percentage of completion attained for that Task. The University shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead (excluding the indirect costs that are budgeted and allowable in Exhibit A), profit, damages, other economic loss, or otherwise.

Sec. 12. Project Director. Mr. Joseph Huegy will serve as Project Director and will supervise the Work at the University. If for any reason the Project Director is unable to continue to serve and a successor acceptable to both parties is not available, this Agreement may be terminated as hereinafter provided.

Sec. 13. Disputes. In the event of a disagreement or dispute regarding any matter covered by this Agreement, that is not disposed of by mutual agreement, the parties hereto may terminate or may pursue other remedies as may be appropriate to resolve the dispute.

Sec. 14. Notice. (a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, email, facsimile with telephone confirmation, or certified United States mail, return receipt requested, addressed as follows:

For the City:

Felix Nwoko, Transportation Planning Manager  
Transportation Department  
City of Durham/DCHC MPO  
1010 City Hall Plaza  
Durham, NC 27701  
Phone: (919)560-4366 Ext 36424  
Email: felix.nwoko@durhamnc.gov

For the University:

North Carolina State University  
Sponsored Programs & Regulatory Compliance Services (“SPARCS”)  
ATTN: Matt Ronning or other Authorized Representative  
2701 Sullivan Drive, Suite 240  
Campus Box 7514  
Raleigh, NC 27695-7514  
The fax number is (919) 515-7721  
Phone: (919) 515-2444  
Email: sps@ncsu.edu

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered, emailed and subsequently opened and read, or sent by fax and confirmed by telephone. If the notice or other communication is sent by United States mail, it shall be deemed given upon actual delivery.

Sec. 15. Trade Secrets and Confidentiality. The request for proposals section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Agreement, except as prohibited by North Carolina law. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the University under this Agreement. The word “Proposer” used in that section shall mean the “University.”

Sec. 16. Liability. (a) To the extent permitted and in the manner prescribed under applicable law, including but not limited to the North Carolina Tort Claims Act, GS § 143-291, et. seq., the University will be responsible for its negligence and the negligence of its employees and agents.

(b) Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the University under this Agreement.

Sec 17. Ownership of Documents, Models, Output Programs and Work Products.

The Triangle Regional Model (TRM) and associated updates, enhancements, improvements, work products, scripts, datasets, sub-models, programs, GIS and graphic, including any

incomplete work, shall be jointly owned by the City, the University, and other stakeholders, the City of Raleigh, Triangle Transit and NCDOT. The University shall be responsible for taking all steps necessary to provide such Work and incomplete Work to the City in such form as the City requests in accord with the Agreement. Neither party transfers by operation of this Agreement any patent rights or copyright rights either party now owns or hereafter acquires in the performance of the Work. Subject to the rights of the Federal Government, University grants to the City, and other stakeholder joint ownership of the deliverables resulting from the Work as identified in the Scope of Work (Exhibit A) and subsequent approved work programs, including all data sets software source code and scripts and documentation necessary to configure, calibrate and run the model. The City will have access to, and joint ownership of, all internal documentation, files, data sets, source code and scripts developed in the course of producing the deliverables. A deliverable is a tangible item that is a product of the Work such as a report, a guidebook, a training manual or a data set. University, the City and other stakeholders shall have joint ownership of any results and all intellectual property created during performance of the Work under this Agreement (e.g. copyrighted works, data, or software). University shall not distribute for profit or reproduce for profit or allow others to profit from the deliverables created by the Work under this Agreement. Also, University shall not engage in services for profit or allow others to profit from the models and associated deliverables and work products created by the Work under this Agreement.

Sec 18. Inventions. In the event that University makes an invention or discovery in the performance of the Work (hereinafter called "Invention"), University agrees to disclose such invention to the City and to enter good faith negotiations to establish the respective rights in said invention in accordance with 35 U.S.C. 206, codified at 37 CFR 401.

Sec 19. Confidentiality and Protected Information. (a) The parties do not anticipate that the City will need to disclose any confidential, protected, or Export Controlled information to University in order to complete the Work. The parties agree that the Work will not involve gathering or generating any such information. The parties agree that if confidential or protected information does become involved, that the parties agree to manage said information in accordance with Section 19(c.). (b.) University may acquire other information exempt from the NC Public Records Act, the Freedom of Information Act (FOIA) (5 U.S.C. § 552, as amended), or otherwise protected by law from disclosure. The University agrees to keep such records confidential in accordance with Section 19(c.) and not divulge or make the records or information available to any individual or organization without the prior written approval of the Sponsor. (c.) During performance, it may be necessary for one party to disclose information that for business reasons is proprietary and confidential to the disclosing party. All such information must be disclosed by the disclosing party in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. The receiving party must use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder. Except as otherwise provided herein, for a period of three (3) years following the date of such disclosure, the receiving party agrees to use the business confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that the restrictions of this subsection do not apply to:

- (i) information which is or becomes publicly known through no fault of the receiving party;
- (ii) information learned from a third party entitled to disclose it;



- (iii) information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;
- (iv) information for which receiving party obtains the disclosing party's prior written permission to publish or which is disclosed in the necessary course of the prosecution of patent applications based upon inventions developed pursuant to this Agreement;
- (v) information required to be disclosed by court order or operation of law, including, but not limited to, the North Carolina Public Records Act; or
- (vi) information that is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.

Sec 20. Publications. University has the right to publish any of the results of the Work. University must furnish the City with a copy of any proposed publication or public disclosure, at least 30 days prior to committing to such publication to allow the City to review the publication for proprietary, confidential, or protected information. University agrees to acknowledge the support of the City in any publication.

Sec 21. Use of Names. Neither party will use the name of the other in any form of advertising, publicity, or in connection with the sale of any product without the written permission of the other party.

Sec 22. Independent Parties. For purposes of this Agreement the parties are independent contractors and neither may be considered an agent or an employee of the other at any time or for any purpose. This Agreement does not create any type of joint venture, partnership or like relationship between the parties. The Federal Government shall not be subject to any obligations or liabilities to the University, any sub-recipient at any tier, or any third party not named as a party to the City's Federal funding agreement.

Sec 23. Assignments and Subawards. This Agreement is binding upon and inures to the benefit of the parties and may be assigned only to the successors to substantially the entire business and assets of the respective parties. Any other assignment or subaward by either party without the prior written consent of the other party is void. University agrees to flow down to Subrecipients at any tier, all the applicable provisions of the Federal funding agreement as provided in this Agreement.

Sec 24. Entire Agreement; Additional Contracts Incorporated. Unless otherwise specified herein, this Agreement embodies the entire understanding of the parties for this Work. It supersedes any prior or contemporaneous representations, either oral or written. A Purchase Order (PO), or other contractual document issued in order to establish an accounts payable record, will be issued for payment purposes only and the terms and conditions associated with such a PO or document are void and do not supersede the terms of this Agreement. No modifications to this Agreement including, without limitation, changes in the field of Work, total estimated cost, and period of performance, are effective unless made in writing and signed by authorized representative of the parties. By signing this Agreement, the University official certifies, to the best of his/her knowledge and belief, that the University is in compliance with all the Certifications and Assurances set forth in Exhibit B. University agrees that should their status on any Certification or Assurance change, they will immediately notify the City in writing.

**Section 25. E-Verify Compliance.** The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary

**Sec. 26. Miscellaneous**

(a) **Choice of Law and Forum.** This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) **Waiver.** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) **Severability.** If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(e) **Assignment. Successors and Assigns.** Without the City's written consent, the University shall not assign (which includes to delegate) any of its rights (including the right to payment except for the case of delinquent payments) or duties that arise out of this Agreement. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the University and all assignees shall be subject to all of the City's defenses provided in this Agreement and shall be liable for all of the University's duties that arise out of this Agreement and all of the University's claims that arise out of this Agreement. As an agency of the sovereign State of North Carolina, University cannot agree to be liable for the City's claims. Notwithstanding the foregoing, the University agrees that it shall not hold the City liable for the acts, negligence and omissions of the University's employees. Without granting the University the right to assign, it is agreed that the duties of the University that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) **Compliance with Law.** In performing all of the Work, the University shall comply with all applicable law.

(g) **City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES THE UNIVERSITY TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONSULTANTS AND VENDORS UNDER CITY AGREEMENTS.

(h) **EEO Provisions.** During the performance of this Agreement the University agrees as follows: (1) The University shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The University shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including

apprenticeship. The University shall post in conspicuous places, available to employees and applicants for employment, notices setting forth EEO provisions. (2) The University shall in all solicitations or advertisement for employees placed by or on behalf of the University, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The University shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding. (4) In the event of the University's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the University ineligible for further City Agreements. (5) University shall adhere to the State of North Carolina's EEO policies and procedures on every purchase order for goods to be used in performing this Agreement and in every subAgreement related to this Agreement so that these EEO provisions will be binding upon such sub-consultants and vendors.

(i) SDBE. The University shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the University to comply with Article III of Chapter 18 shall be a material breach of Agreement which may result in the rescission or termination of this Agreement and/or other appropriate remedies in accordance with the provisions of Article III of Chapter 18, this Agreement, and State law. The Participation Plan submitted in accordance with that chapter is binding on the University. Section 18-59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that the [University] has failed to comply with the provisions of the Contract, the City Manager shall notify the [University] in writing of the deficiencies. The [University] shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the University's alleged violations of its obligations under Article III of Chapter 18 and not to the University's alleged violations of other obligations. Notwithstanding the SDBE compliance obligations outlined in this Section 25(i), the Parties agree that the University is required to comply with certain N.C. General Statutes governing goods and service procurement by state departments, agencies and institutions. If during the performance of its obligations pursuant to this Section 25(i), the University encounters a conflict between this Section 25(i) and specific N.C. General Statute requirements, the University shall identify such conflict to the City and the Parties agree to work in good faith to resolve such conflict such that the University complies with state law requirements governing goods and service procurement.

(j) Prompt Payment to Sub-consultants. Within 30 days of receipt by the University of each payment from the City under this Agreement, the University shall pay all sub-consultants (which term includes sub-consultants and suppliers) whom have submitted an appropriate invoice based on work completed or service provided under the subAgreement. By appropriate litigation, sub-consultants shall have the right to enforce this subsection (a) directly against the University, but not against the City of Durham. If the City's Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay the invoice from progress or final payments to the University. (b) Nothing in this section shall prevent the University at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the sub-consultant for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the sub-consultant to make timely payments for labor, equipment, and materials; damage to the University or another sub-consultant; reasonable

evidence that the subAgreement cannot be completed for the unpaid balance of the subAgreement sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a prerequisite to making progress or final payments, that the University provide statements from any sub-consultants designated by the Project Manager regarding the status of their accounts with the University. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This Agreement is intended for the benefit of the City and the University and not any other person.

(l) Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to Agreements and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Agreement" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(m) Modifications. Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, except for minor modifications to the subtasks of the Work described in Section 4 above, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

IN WITNESS WHEREOF, the City and the University have caused this Agreement to be executed by their respective duly authorized agents or officers under seal themselves the day and year heretofore set out, in triplicate, on the part of the City and the University by authority duly given, as evidenced by the attached certified copy of resolution, ordinance, or charter provision, as the case may be.

This space intentionally left blank

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
City's Finance Officer

\_\_\_\_\_  
Date

CITY OF DURHAM  
ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

NORTH CAROLINA  
COUNTY of DURHAM

ACKNOWLEDGMENT BY CITY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally appeared before me this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Agreement or agreement was signed in its corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

North Carolina State University

ATTEST:

By \_\_\_\_\_  
Name & Title

By: \_\_\_\_\_  
Signature

Date \_\_\_\_\_

State of \_\_\_\_\_

ACKNOWLEDGMENT BY UNIVERSITY

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ Personally appeared before me this day and  
North Carolina State University, a public, land grant, institute of higher education, and that by  
authority duly given and as the act of the university, the forgoing Agreement with the City of  
Durham was signed in its name by its (title) \_\_\_\_\_,  
whose name is \_\_\_\_\_, and attested by  
\_\_\_\_\_. This the \_\_\_\_\_ day of  
\_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_